

PUBLIC HEALTH COUNCIL

A regular meeting of the Massachusetts Department of Public Health's Public Health Council was held on Wednesday, June 11, 2008, 9:00 a.m., at the Department of Public Health, 250 Washington St., Boston, Massachusetts in the Henry I. Bowditch Public Health Council Room. Members present were: Chair John Auerbach, Commissioner, Department of Public Health, Dr. John Cunningham, Dr. Michèle David, Dr. Muriel Gillick, Mr. Paul J. Lanzikos (arrived at 9:15 a.m.), Mr. Denis Leary (arrived at 10:15 a.m.), Ms. Lucilia Prates Ramos, Mr. José Rafael Rivera, Dr. Meredith Rosenthal, Mr. Albert Sherman, Dr. Alan C. Woodward and Dr. Barry S. Zuckerman. Ms. Caulton-Harris, Mr. Harold Cox, and Dr. Michael Wong were absent. Also in attendance was Attorney Susan Stein, First Deputy General Counsel filling in as Counsel for Attorney Donna Levin, DPH General Counsel who was absent.

Chair Auerbach announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance. He said further that the docket items would be heard in the following order: Records of meetings; Environmental Guidelines; "Domestic Violence Update"; Regulatory amendments to 105 CMR 480.000, and the "Healthy Massachusetts Compact". He noted that the Oral Health Presentation previously scheduled would be postponed until a future meeting.

RECORDS OF THE PUBLIC HEALTH COUNCIL MEETINGS OF FEBRUARY 13, 2008 AND MARCH 12, 2008:

Records of the Public Health Council Meetings of February 13, 2008 and March 12, 2008 were presented to the Public Health Council for approval. Dr. Alan Woodward, Council Member, noted a typo on page 4, under subtitle Next Steps, of the March 12, 2008 minutes, "take off the extra "e" at the end of Suzanne Condon's last name."

The Council voted first on the **February 13, 2008 Minutes**. Mr. Albert Sherman moved for approval of the minutes of February 13, 2008. After consideration, upon motion made and duly seconded, it was voted unanimously [Mr. Lanzikos and Mr. Leary not present to vote] to approve the February 13, 2008 record. The record was distributed to the members prior to the meeting for review.

Council Member Dr. Alan Woodward moved for approval of the **March 12, 2008 Minutes**. After consideration, upon motion made and duly seconded, it was voted unanimously [Mr. Lanzikos and Mr. Leary not present to vote] to approve the March 12, 2008 Minutes with the above corrections as noted above by Dr.

Woodward. The record was distributed to the members prior to the meeting for review.

For the record, Council Member Paul Lanzikos arrived at the meeting at this point.

INFORMATIONAL BRIEFING ON PROPOSED DETERMINATION OF NEED GUIDELINES FOR ENVIRONMENTAL IMPACT:

Chair Auerbach noted for the record, "This is a presentation that is in response to suggestions by members of the Public Health Council...There was a recommendation that we think about having guidelines that address certain environmental issues, so that in the future, there is a standard that is set, that we can expect to be met with capital project applications."

Ms. Joan Gorga, Director, Determination of Need Program, presented the proposed green guidelines to the Council. She said in part, "...The proposed guidelines, which are being termed "Green Guidelines", will be utilized in determining whether applicants presenting DoN Applications for construction projects meet Factor 8 of the DoN factors of review. Factor 8 requires that the DoN application must provide appropriate and adequate written assurances to satisfy the Massachusetts Environmental Protection Act that all feasible measures will be taken in the execution of the project to avoid or minimize damage to the environment. This is the present Factor 8, the requirement. Applicants must complete a checklist which includes thresholds for land, rare species, wetlands, waterways and tidelands, water transportation and historic or architectural resources. As you can see, emphasis has been on the external aspects of the proposed project. The Department proposes to recognize the importance of environmentally sound building design, construction materials, and operations in new construction and renovation of health care facilities. Hospitals, and later nursing homes, will be required to use the Green Guide for Health Care, known as the GGHC, which is the document that is in front of you, and Leadership in Energy and Environmental Design Health Care, known as LEED-HC, as a condition of approval for renovation and replacement projects."

During her presentation, Ms. Gorga noted that the City of Boston adopted revisions to its zoning code based on the same standards in January 2007, and all construction projects over 50,000 square feet are required to comply with the standards. She said, "This effort will expand the use of these best practice standards to the rest of the Commonwealth. After the public hearings, we will return to the Council for approval and if you adopt these then, "Massachusetts will be the first state in the nation to require Green Guidelines for use in Determination of Need."

Ms. Gorga's slide presentation continued - please see the verbatim transcript and a copy of her slides for further information. "The Department is proposing to implement the guidelines in phases, with compliance at acute care and non-acute care implementing in October 2008, and long term care facilities implemented in 2009. After today's meeting, the guidelines will be released for public comment and distributed to Interested Parties, many of whom will be the groups impacted by the Guidelines. The public comment period will extend four weeks until July 9, 2008 and following that, the Department will return to the Council for to review the comments, present changes in response to the comments and request approval of any amendments to the Guidelines."

Discussion followed by the Council. Mr. Bill Ravanese, Boston Regional Director for Healthcare without Harm and Mr. Paul Lipke, Acting Executive Director of Sustainable Step New England answered questions by the Council. Ms. Gorga thanked them for helping develop the guidelines and for their offer to do in-kind in-service training to the plan review and DoN Staff. Dr. Barry Zuckerman, Public Health Council Member asked about cost benefit. Mr. Ravanese replied in part, by referring to the Brigham and Women's LEED Certifiable Project. He also said, "We are seeing hospital after hospital example of this, where the additional costs, if they are there, are very minimal at best. In addition to that, if you just look at first cost, you are sort of looking with a myopic vision here. They are looking at this as life cycle costing here, and down the road. They have pushed the energy package on this to save upwards of 28 to 29% energy on this, 24% energy conservation on water alone. These figures on the operations side will be coming in for year to year, to year, over the fifty year life of this building, where they will be saving a considerable amount of money..."

Dr. Alan Woodward, Council Member noted, "I commend you all for this direction. I question how we came up with 38%? Why didn't we shoot for Silver Certification at this point? Chair Auerbach asked Mr. Ravanese to explain the point system to the Council: "You have a total number of points that you can get prerequisite points or credits. If it is 100 credits, you have to get 38% of those 100 credits to be what is considered LEED certifiable. We are not saying LEED certified because that would direct the hospitals into using the U.S. GBC's tool. We want the hospitals to be able to use a voluntary one, as well as the LEED certifiable tool, to have an option between two different pieces to go forward on, or using both, which we are seeing hospitals use."

Discussion continued (see verbatim transcript for full discussion) on what the standard should be certifiable or silver. Dr. Woodward reiterated that he thought silver was attainable and that there could be some kind of out mechanism for facilities that cannot implement all of the strategies. Dr. Meredith Rosenthal inquired about projects expected down the line and their ability to meet the certifiable or Silver standards. Ms. Gorga said in part that she expects about 12

projects in the next five years that this would pertain to and that the nursing homes would need some help. Dr. John Cunningham asked about how one would apply the credits. M. Ravanese, Boston Regional Director, Health Care, replied, "All the standards in the guide would have to be met; you can't pick and choose items."

Mr. Paul Lipke, Acting Executive Director, Sustainable Step New England & Senior Advisor on Energy in Buildings, Health Care Without Harm noted, "I think the other question is, 'What is the threshold and the weighting of it, and one of the things that is going to be happening going forward, as the Green Guide and LEED-HC come together in the next year, is that, right now the way it works, you get a credit for water efficiency here, and you get the same credit in the desert southwest, or in water-stressed regions. That will shift. There will be a regional bias. So energy efficiency, which is a stronger piece in this part of the country, and in certain parts of the State, will get more weight in the evaluation."

Council Member José Raphael Rivera asked Ms. Gorga, "Under the proposed enhancement, it will require hospitals to use these guidelines as a condition of approval of renovation and replacement projects. Does that also include new buildings?" Ms. Gorga replied, "Yes – That's a typo."

Council Member Dr. Michèle David asked, "What are the operational costs and community benefits when you go from certifiable to Silver to Gold or Platinum?" Mr. Ravanese said in part, "...The benefit as you reach higher on the achievement level, it is much more difficult for you on energy, to get up to say a forty percent energy conservation, which means more money saved over the life of the building; but, with your capital cost up front, you are going to have to put out some more money on that to get to the goal. There is probably about a 2% increase in cost to go from Silver to Gold on that particular credit." Mr. Paul Lipke also responded, "...What is the return for the institution. We are talking about 24/7 operations. American hospitals in general, use twice the energy per square foot than their European counterparts in the same heating and cooling environment. There is a lot of room to maneuver. There is a lot of waste that we can pick up and now that we are talking about \$130, \$150, \$200.00 a barrel of oil, looking out over time, I think the answer is, who is crunching the numbers, and that really speaks to this whole breakdown between the operational benefit side. I think between one and two percent on some of the more technically difficult challenges, and the payback, I mean, you look at a change in flooring. You go from vinyl covered tile to a rubber floor. It might be four times the cost installed, but the payback is under five years, and that is not counting reduced trips and falls, better patient outcomes because it is quieter, less stress on staff because it is a more comfortable surface to walk on, etc., etc.; and, right now, the conversation is, what are those worth in salary benefits,

in better presenteeism, reduced absenteeism for staff, for nursing productivity, etc.."

Council Member Dr. Muriel R. Gillick, said, "I think this is groundbreaking work...I am wondering whether there is a sense about the frequency with which the nationally accepted standards are likely to be revised and whether there might be benefit to pegging Massachusetts regulations to some other national standards?" Mr. Lipke responded, "These are the national standards currently, and the regulations state 'GGHC, LEED-HC or, upon approval, the nationally accepted best practice standard.' That gives the Department and the Council the right to move those forward without changing the guidelines as they are currently written..." Attorney Carol Balulescu noted from the floor that "if it [a national standard or best practice] is referenced in the guidelines then they [standards applied by the DoN program] can be changed without a public hearing."

Mr. Paul Lanzikos, Council Member said in part, "...I think the benefits that are being expressed here, both for the environmental and potential cost savings, are viable and I think it is also commendable that Massachusetts could be the first in the nation. I am curious about why there are not other states espousing the adoption of these guidelines?" Mr. Ravanese noted that Seattle has LEED Silver for the whole city whether you are a health care institution or an office building and further that cities like San Francisco and Chicago have programs, Illinois is moving forward and may be the first state ahead of Massachusetts. Mr. Lipke added that discussions are happening in California also.

Chair Auerbach summarized for the Council, stating in part, "...There is strong support from the Council for the release of these guidelines. There is a wanting, a desire to have certain language clarified before the release, the use of the word "new", I presume is in there and if not, we just want to make sure that it gets incorporated. We want to have language that clarifies which standards we are talking about, and perhaps as Dr. Woodward suggested, perhaps the word, "current" or the "most recent" but our legal staff will work on that and select the word that captures that most accurately throughout the draft. And then the critical, most substantive piece that was raised, the issue of what the standard should be...thirty-eight versus higher..." Council Member Dr. John Cunningham stated, "Perhaps, if we ask for comments about Silver, it will get us the information we need, and it is easier to fall back then to try to go more stringent. I think if we are getting comments, you want to get comments about the highest bar and see what people say."

Chair Auerbach replied, "We certainly can do that and I think it is the will of the Council. We can say in the release of it that we want people to specifically pay

attention to commenting on that so that we are able to return to the Council with feedback about what the belief was about the feasibility of that."

Mr. Ravanese said "he feels that the acute care hospitals, the large Harvard teaching hospitals are on board with Silver and so is the Baystate Medical Center in the Western part of the state. You are going to get push back from the small community hospitals that are really challenged financially...and from the nursing homes because this is such a new idea...He said everybody follows what Partners does..."

Chair Auerbach noted, "We don't want an unintended consequence of passing something like this to create an uneven playing field with regard to hospitals and health care facilities. We will see what they have to say, and we will make our final determination about that."

Mr. Lanzikos suggested that the guidelines be forwarded to these two state agencies: the Division of Health Care Finance and Policy and the Secretary of Environmental Affairs. Chair Auerbach agreed and asked Ms. Gorga to insure that happens. Ms. Gorga was also asked to provide the Council Members with the most useful and informative summaries of the subject matter. Please see verbatim transcript for full discussion.

No Vote/Information Only

"DOMESTIC VIOLENCE UPDATE", BY CARLENE PAVLOS, DIRECTOR, VIOLENCE AND INJURY PREVENTION PROGRAM, DEPARTMENT OF PUBLIC HEALTH:

Ms. Carlene Pavlos presented a domestic violence update to the Council, "On June 5th, Governor Patrick and Lieutenant Governor Murray received a briefing on the recent spike in domestic violence related deaths. The briefing involved the Executive Office of Health and Human Services, the Executive Office of Public Safety and Security, the Governor's Council addressing Sexual and Domestic Violence, Jane Doe, Inc., which is our State Coalition that does domestic violence and sexual assault work, and the Department of Public Health." She provided some statistics:

- According to the Jane Doe, Inc.: In Calendar Year 2005, there were 15 murders and four domestic violence related suicides. In 2006, that number was 28 murders and three suicides; in 2007 the number spiked to 42 murders and 13 suicides. That is a near tripling of domestic violence related deaths over that time period

- In 2008, so far there has been 20 domestic violence homicides and five domestic violence related suicides. That is already an increase from what was announced on June 5th.

Ms. Pavlos noted that it was a unique step (i.e., never done before in Massachusetts or perhaps anywhere before in the nation) in the releasing of a Public Health Advisory on domestic violence. She said, this Public Health Advisory has three goals:

- To increase public awareness of domestic violence and the role that everyone has in addressing domestic violence;
- To Provide information and resources to victims of domestic violence, particularly about the availability of services throughout the Commonwealth (i.e., Victim Services)
- Increase the awareness and attention to domestic violence amongst all at the state and community level so they can work in a coordinated fashion to address domestic violence (i.e., partners in EOHHS, Public Safety, and Criminal Justice).

Next Steps:

Ms. Pavlos said, "We want to mobilize health care providers to take a role in addressing domestic violence (between 42 and 47% of domestic violence victims saw a health care provider in the year preceding their murder). If we can get information on how to appropriately screen and appropriately intervene and refer victims of domestic violence to lifesaving victim services, we may be able to have a significant impact."

Ms. Pavlos indicated that DPH would be working with the Jane Doe Coalition and the Department's model health care domestic violence programs in developing materials for health care providers and doing the training for interested health care providers across the Commonwealth. They will continue to work with sister agencies: the Department of Social Services (DSS), the Department of Transitional Assistance (DTA), the Executive Office of Public Safety and the Governor's Council on the issue.

A discussion followed by the Council (see verbatim transcript). Mr. Rafael Rivera applauded Ms. Pavlos on using gender neutral terms. The Council Members mentioned that outreach and/or information should be given to the following groups: Refugee and Immigrants including immigrant elders, older adults in general, people with disabilities, the GLBT communities (Gay, Lesbian, Bisexual

and Transgendered), Veterans especially those returning from Iraq with PTSD, and the Community Health Workers.

For the record, Council Member Denis Leary arrived at 10:15 a.m. during the domestic violence presentation.

NO VOTE/INFORMATION ONLY

BRIEF SALMONELLA AND TOMATOES UPDATE:

Ms. Suzanne Condon, Director, Bureau of Environmental Health, Department of Public Health, responded to a question by Council Member Albert Sherman regarding the tomato salmonella outbreak. She stated in part, "...The Federal Government did institute a recall of specifically raw red Roma, raw red round, and raw red plum tomatoes due to salmonella concerns. We can tell you that there have been no cases of salmonella linked in Massachusetts that have been linked to this recall in any way. We also have no evidence to suggest that Massachusetts tomatoes may be a source of this national outbreak. We are continuing to keep in close touch with our Federal Food Protection partners, and also, within the Department with our communicable Disease Control Bureau."

Ms. Condon noted that the Department has a Foodborne Illness Working Group that meets every two weeks to discuss any foodborne illness concerns. It includes the Division of Communicable Disease Control, the State Laboratory Institute staff and food protection staff in the Division of Environmental Health.

She said further, "The good news is, we haven't seen anyone sick in Massachusetts that we believe has been tied to this outbreak. We also don't believe that Massachusetts produce has been a source of this, but we continue to watch each and every day..." Regarding the FDA, she said, "...They don't know where it is coming from, but they do know what has been impacted in the food supply and, therefore, they took the steps to advise people to either not consume, or for retail food establishments, not to use, and that makes the most prudent Public Health sense..."

NO VOTE/INFORMATION ONLY

REQUEST FOR FINAL PROMULGATION OF AMENDMENTS TO 105 CMR 480.000: MINIMUM REQUIREMENTS FOR THE MANAGEMENT OF MEDICAL OR BIOLOGICAL WASTE, STATE SANITARY CODE, CHAPTER VIII:

Ms. Suzanne Condon, Director, Bureau of Environmental Health, Department of Public Health, accompanied by Mr. Steven Hughes, Director, Community

Sanitation Program, and Attorney James Ballin, Deputy General Counsel, Office of the General Counsel at DPH, presented the proposed amendments to 105 CMR 480.000 for approval.

Ms. Condon gave an outline of the presentation: First, the purpose and background information of the Medical Waste Regulations in Massachusetts, the specific need for the changes, highlights of the public comment process, and staff's responses to the comments, and presenting the proposed regulatory amendments for approval.

In summary, Ms. Condon said, "The proposed amendments update various aspects of our regulations to reflect the current standards and procedures, including the Biotech industry, to restore documentation requirements related to the tracking of medical waste, which were preempted by federal law, and to provide for requirements in response to the new Pharmacy Access Law. We received over one hundred comments from about thirty entities on the proposed amendments, and incorporated clarifying language or revisions where appropriate in response to those comments. We continue to work with various stakeholders to implement the new requirements of the Pharmacy Access Law, including proving a limited number of Kiosks statewide for sharps disposal, through local health official applications, and we are continuing to work with industry, local health and municipal officials to develop and implement a statewide strategy for sharps disposal to meet the 2010 regulatory requirements."

A brief discussion followed by the Council. The Council wondered where the needles went to once they are collected from the Kiosks and further if certain portions of the needle, the plastic and steel could be recycled. Staff informed the council that for the most part it was out of their hands because this state does not have central processing. A waste company picks them up and then they have out-of-state facilities that provide treatment and disposal options after the fact. We have no control of it once it crosses the state border. It is believed to be treated like medical waste from hospitals and burned in incinerators for the most part, though there are other ways to do it. This kills any infectious organisms. In regard to possible recycling the needles Ms. Condon said, that alternative could be discussed by the follow-up stakeholder meetings. Mr. Lanzikos asked about the reporting requirement and why it was necessary for staff to collect a hard copy since they will have the electronic version. Mr. Hughes stated, "for accountability purposes, and if there ever was a concern, it is not as feasible to anticipate coming in and logging onto somebody's computer to get that electronic data; whereas, a hard copy confirms that the electronic data was submitted."

Note for the record, Mr. Albert Sherman left the meeting at about 10:35 a.m. at the start of Ms. Condon's presentation on 105 CMR 480.000.

Dr. Alan Woodward made the motion for approval. After consideration, upon motion made and duly seconded, it was voted unanimously to approve **Final Promulgation of Amendments to 105 CMR 480.000: Minimum Requirements for the Management of Medical or Biological Waste, State Sanitary Code, Chapter VIII**; and that a copy be attached and made a part of this record as **Exhibit No. 14, 903**.

"HealthyMass – Our Health is our Commonwealth", by Kristin Golden, Director of Policy and Planning:

Ms. Golden noted that "HealthyMassachusetts" or otherwise known as "HealthyMass Compact" is an initiative by JudyAnn Bigby, Secretary, Executive Office of Health and Human Services. She said in part, "...It is a first of its kind coordinated approach across State Government, that is looking at how can the State improve health by using all of its resources, whether it be the obvious ones, that are health related, but also the not-so-obvious ones...Nine groups have signed on to this initiative. The Governor brought those people together and launched this initiative in December of 2007 at a press conference."

A brief discussion followed by the Council. Council Member Barry Zuckerman asked, "Is the group about cost and quality of health care or to improve health? In other words, is it on the health care system or on the health of the population?" Ms. Golden stated the five goals of HealthyMass are to ensure access to care, improve quality of care, and reduce cost, while also promoting individual wellness and community health across the Commonwealth." There are five Task Forces for these five initial areas being focused on. The Task Forces are Serious Reportable Events, Performance Management Alignment, Payment System Reform, Administrative Simplification, and Disease Management and Wellness.

Dr. Meredith Rosenthal, Council Member, inquired about the funding of the MassCompact – it being such a large effort. Ms. Golden said that primarily internal resources, folks generously coming to the table with their staff, some project management resources from UMASS and the Secretary of EOHHS' office. The discussion has not occurred yet on where funding will come from to implement the task force recommendations. Council Members Dr. Muriel Gillick and Ms. Lucilia Prates Ramos asked why CMS was not at the table on the Payment Reform Task Force since many of the elderly's bills are paid with Medicare. Chair Auerbach replied in part, "...I think the expectation is that discussions will occur once there is clarity of vision at the State level."

No Vote/Information Only

The meeting adjourned at 11:25 a.m.

John Auerbach, Chair

LMH